

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL 433*
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Third Edition Engrossed 4/11/13
Senate Commerce Committee Substitute Adopted 4/23/13
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Short Title: Land Use Surrounding Military Installations.

(Public)

Sponsors:

Referred to:

March 27, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO SUPPORT THE ACTIVITIES OF THE ARMED FORCES AND TO
3 MAINTAIN AND ENHANCE THE MILITARY'S PRESENCE IN NORTH CAROLINA
4 BY REGULATING THE HEIGHT OF BUILDINGS AND STRUCTURES LOCATED IN
5 AREAS THAT SURROUND MILITARY INSTALLATIONS IN THE STATE.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Chapter 143 of the General Statutes is amended by adding a new
8 Article to read:

9 "Article 9G.

10 "Military Lands Protection.

11 **"§ 143-151.70. Short title.**

12 This Article shall be known as the Military Lands Protection Act of 2013.

13 **"§ 143-151.71. Definitions.**

14 Within the meaning of this Article:

- 15 (1) "Area surrounding major military installations" is the area that extends five
16 miles beyond the boundary of a major military installation and may include
17 incorporated and unincorporated areas of counties and municipalities.
18 (2) "Building Code Council" means the Council created pursuant to Article 9 of
19 Chapter 143 of the General Statutes.
20 (3) "Commissioner" means the Commissioner of Insurance.
21 (4) "Construction" includes reconstruction, alteration, or expansion.
22 (5) "Major military installation" means Fort Bragg, Pope Army Airfield, Camp
23 Lejeune Marine Corps Air Base, New River Marine Corps Air Station,
24 Cherry Point Marine Corps Air Station, Military Ocean Terminal at Sunny
25 Point, the United States Coast Guard Air Station at Elizabeth City, Naval
26 Support Activity Northwest, Air Route Surveillance Radar (ARSR-4) at Fort
27 Fisher, and Seymour Johnson Air Force Base, in its own right and as the
28 responsible entity for the Dare County Bombing Range, and any facility
29 located within the State that is subject to the installations' oversight and
30 control.
31 (6) "Person" means any individual, partnership, firm, association, joint venture,
32 public or private corporation, trust, estate, commission, board, public or



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1 private institution, utility, cooperative, interstate body, the State of North
2 Carolina and its agencies and political subdivisions, or other legal entity.

3 (7) "Tall buildings or structures" means any building, structure, or unit within a
4 multiunit building with a vertical height of more than 200 feet measured
5 from the top of the foundation of the building, structure, or unit and the
6 uppermost point of the building, structure, or unit. "Tall buildings or
7 structures" does not include:

8 a. Slender structures and minor vertical projections of a parent building,
9 including chimneys, flagpoles, flues, spires, steeples, belfries,
10 cupolas, antennas, poles, wires, or windmills. Windmills exempt
11 pursuant to this sub-subdivision shall project no more than 20
12 vertical feet above the parent building.

13 b. Buildings and structures listed individually or as contributing
14 resources within a district listed in the National Register of Historic
15 Places.

16 **"§ 143-151.72. Legislative findings.**

17 North Carolina has a vested economic interest in preserving, maintaining, and sustaining
18 land uses that are compatible with military activities at major installations. Development
19 located proximate to military installations has been identified as a critical issue impacting the
20 long-term viability of the military in this State. Additional concerns associated with
21 development include loss of access to air space and coastal and marine areas and radio
22 frequency encroachment. The construction of tall buildings or structures in areas surrounding
23 major military installations is of utmost concern to the State as those buildings and structures
24 may interfere with or impede the military's ability to carry out activities that are vital to its
25 function and future presence in North Carolina.

26 **"§ 143-151.73. Certain buildings and structures prohibited without endorsement.**

27 (a) No county or city may authorize the construction of, and no person may construct, a
28 tall building or structure in any area surrounding a major military installation in this State,
29 unless the county or city is in receipt of either a letter of endorsement issued to the person by
30 the Building Code Council pursuant to G.S. 143-151.75 or proof of the Council's failure to act
31 within the time allowed pursuant to G.S. 143-151.75.

32 (b) No county or city may authorize the provision of the following utility services to
33 any building or structure constructed in violation of subsection (a) of this section: electricity,
34 telephone, gas, water, sewer, or septic system.

35 **"§ 143-151.74. Exemption from applicability.**

36 Wind energy facilities and wind energy facility expansions, as those terms are defined in
37 Chapter 143 of the General Statutes, that are subject to the applicable permit requirements of
38 that Chapter shall be exempt from obtaining the endorsement required by this Article.

39 **"§ 143-151.75. Endorsement for construction of tall buildings or structures required.**

40 (a) No person shall undertake construction of a tall building or structure in any area
41 surrounding a major military installation in this State without either first obtaining the
42 endorsement from the Building Code Council or proof of the Council's failure to act within the
43 time allowed.

44 (b) A person seeking endorsement for the construction of a tall building or structure in
45 any area surrounding a major military installation in this State shall provide written notice of
46 the intent to seek endorsement to the commanders of the installation that is located within five
47 miles of the proposed construction of a tall building or structure and shall provide all of the
48 following to the Building Code Council:

49 (1) Identification of the major military installation and the base commander of
50 the installation that is located within five miles of the proposed construction
51 of a tall building or structure.

- 1 (2) A copy of the written notice sent to the commanders of the installation
2 identified in subdivision (1) of this subsection that is located within five
3 miles of the proposed construction of a tall building or structure.
- 4 (3) A written statement from the base commander of the installation identified
5 in subdivision (1) of this subsection that includes both of the following:
- 6 a. A determination whether the location of the proposed construction of
7 the tall building or structure is within a protected area that surrounds
8 the installation.
- 9 b. A determination whether any activities of the installation may be
10 adversely affected by the proposed construction of the tall building or
11 structure. A detailed description of the potential adverse effects,
12 including frequency disturbances and physical obstructions, shall
13 accompany the determination required by this sub-subdivision.
- 14 (4) A written "Determination of No Hazard to Air Navigation" issued by the
15 Federal Aviation Administration pursuant to Subpart D of Part 77 of Title 14
16 of the Code of Federal Regulations (January 1, 2012, Edition) for the
17 proposed construction of the tall building or structure.
- 18 (c) The Building Code Council shall not endorse the construction of a tall building or
19 structure if the Council finds any one or more of the following:
- 20 (1) Construction of the proposed tall building or structure would encroach upon
21 or otherwise interfere with the mission, training, or operations of any major
22 military installation in North Carolina and result in a detriment to continued
23 military presence in the State. In its evaluation, the Building Code Council
24 may consider whether the proposed tall building or structure would cause
25 interference with air navigation routes, air traffic control areas, military
26 training routes, or radar based on the written statement received from a
27 commander of a major military installation required pursuant to subdivision
28 (3) of subsection (b) of this section and written comments received by
29 members of affected communities.
- 30 (2) The Council is not in receipt of the written "Determination of No Hazard to
31 Air Navigation" issued to the person by the Federal Aviation Administration
32 required pursuant to subdivision (4) of subsection (b) of this section.
- 33 (d) The Building Code Council shall make a final decision on the request for
34 endorsement of the construction of a tall building or structure within 60 days of receipt of the
35 items provided by the person pursuant to subsection (b) of this section. If the Council
36 determines that a request for the construction of a tall building or structure fails to meet the
37 requirements for endorsement under this section, the Council shall deny the request. The
38 Council shall notify the person of the denial, and the notice shall include a written statement of
39 the reasons for the denial. If the Council fails to act within any time period set forth in this
40 section, the person may treat the failure to act as a decision to endorse the construction.
- 41 (e) The Building Code Council may meet by telephone, video, or Internet conference,
42 so long as consistent with applicable law regarding public meetings, to make a decision on a
43 request for endorsement for the construction of a tall building or structure pursuant to
44 subsection (d) of this section.

45 **§ 143-151.76. Application to existing tall buildings and structures.**

46 G.S. 143-151.73 applies to tall buildings or structures that existed in an area surrounding
47 major military installations upon the effective date of this Article as follows:

- 48 (1) No reconstruction, alteration, or expansion may aggravate or intensify a
49 violation by an existing building or structure that did not comply with
50 G.S. 143-151.73 upon its effective date.

1 (2) No reconstruction, alteration, or expansion may cause or create a violation
2 by an existing building or structure that did comply with G.S. 143-151.73
3 upon its effective date.

4 **"§ 143-151.77. Enforcement and penalties.**

5 In addition to injunctive relief, the Commissioner may assess and collect a civil penalty
6 against any person who violates any of the provisions of this Article or rules adopted pursuant
7 to this Article, as provided in this subsection. The maximum civil penalty for a violation is five
8 thousand dollars (\$5,000). A civil penalty may be assessed from the date of the violation. Each
9 day of a continuing violation may constitute a separate violation if the person is not in the
10 process of remedying the violation.

11 (1) The Commissioner shall determine the amount of the civil penalty and shall
12 notify the person who is assessed the civil penalty of the amount of the
13 penalty and the reason for assessing the penalty. The notice of assessment
14 shall be served by any means authorized under Rule 4 of G.S. 1A-1 and shall
15 direct the violator to either pay the assessment or contest the assessment
16 within 30 calendar days by filing a petition for a contested case under Article
17 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil
18 penalty assessed by the Commissioner within 30 calendar days after it is
19 due, the Commissioner shall request that the Attorney General institute a
20 civil action to recover the amount of the assessment. The civil action may be
21 brought in the superior court of any county where the violation occurred. A
22 civil action must be filed within one year of the date the assessment was due.
23 An assessment that is not contested is due when the violator is served with a
24 notice of assessment. An assessment that is contested is due at the
25 conclusion of the administrative and judicial review of the assessment.

26 (2) In determining the amount of the penalty, the Commissioner shall consider
27 the degree and extent of harm caused by the violation, the cost of rectifying
28 the damage, the amount of money the violator saved by noncompliance,
29 whether the violation was committed willfully, the prior record of the
30 violator in complying or failing to comply with this Article, and the action of
31 the person to remedy the violation.

32 (3) The clear proceeds of civil penalties collected by the Commissioner under
33 this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in
34 accordance with G.S. 115C-457.2."

35 **SECTION 2.** G.S. 143-138 is amended by adding a new subsection to read:

36 "(j2) Pursuant to Article 9G of Chapter 143 of the General Statutes, the Building Code
37 Council is authorized to review and endorse proposals for the construction of tall buildings or
38 structures in areas surrounding major military installations, as those terms are defined in
39 G.S. 143-151.71."

40 **SECTION 3.** This act becomes effective October 1, 2013.